

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **June 6, 2006**

RE: **Analysis Report**

Balances As Of:	<u>5/31/06</u>	<u>6/1/05</u>
<u>GSD 4% RESERVE FUND</u>	*\$1,629,890	\$12,393,245
<u>CONTINGENCY ACCOUNTS</u>		
GSD	- 0 -	- 0 -
USD	\$50,000	\$50,000
<u>GENERAL FUND</u>		
GSD	\$26,413,198	\$28,815,661
USD	\$8,770,800	\$5,003,020
<u>GENERAL PURPOSE SCHOOL FUND</u>	\$17,566,775	\$25,250,424

* Assumes estimated revenues in fiscal year 2006 in the amount of \$21,037,500

– BILL ON PUBLIC HEARING –

ORDINANCE NO. BL2006-1089 (MCCLENDON) – This ordinance adopts the capital improvements budget for 2006-2007 through 2011-2012. A separate analysis will be provided for the capital improvements budget prior to third reading. The capital improvements budget is a planning document and does not in itself appropriate any money. All capital projects must be provided for in this document before a capital improvement can be approved by the council, except in the case of a public emergency.

This budget is amendable on third and final reading. The Charter requires the council to adopt the capital improvements budget not later than June 15th of each year. An adjourned meeting of the Council will be held June 13, 2006 at 7:00 p.m. for the purpose of approving the capital improvements budget within the time limit required by the Charter. Once adopted, future amendments to the capital improvements budget must be approved by the planning commission, be recommended by the Mayor, and then be adopted by resolution of the council receiving twenty-seven (27) affirmative votes.

– RESOLUTIONS –

RESOLUTION NOS. RS2006-1317 & RS2006-1318 – These two resolutions authorize aerial encroachments above sidewalks. Ordinance No. O87-1890 allows such aerial encroachments to be approved by resolution of the council rather than ordinance. The applicants have agreed to indemnify the Metropolitan Government from all claims in connection with the installation and maintenance of the encroachments, and are required to provide a \$300,000 certificate of public liability insurance naming the Metropolitan Government as an insured party. These resolutions have been approved by the planning commission.

Resolution No. RS2006-1317 (Hausser) authorizes West End Restaurants to install and maintain a metal canopy extending ten feet above and three feet over the sidewalk at 3000 West End Avenue.

Resolution No. RS2006-1318 (Jameson) authorizes Stahlman Redevelopment Partners to install flags over the sidewalk on Third Avenue North and Union Street at the Stahlman building. These flags will measure 5 feet by 8 feet and will extend 22 feet above the sidewalk at a 33 degree angle.

RESOLUTION NO. RS2006-1328 (MCCLENDON) – This resolution appropriates \$2,194,500 from the unappropriated fund balance of the general fund of the general services district to various departments to balance their budgets for the current fiscal year. The appropriations are as follows:

- Health department: \$1,651,200 for medical services
- Health department: \$460,300 to compensate for deficiencies in the grant fund
- Transportation licensing commission: \$3,000 for fingerprinting and background checks on taxicab drivers
- District attorney: \$80,000 for mediation services

RESOLUTION NO. RS2006-1329 (MCCLENDON) – This resolution determines to issue \$296,325,332 in GSD general obligation bonds and \$22,356,150 in USD general obligation bonds to

provide funding for various projects contained in the mayor's capital spending plan. This is the first step in the process toward the ultimate sale of the bonds by public bid to provide the necessary financing for the projects. The general obligation bonds to be issued provide funding for some 57 GSD projects, and the USD bonds will provide funding for 5 projects. This debt will be paid from the debt service of the GSD and the USD.

The projects to be financed with the GSD bonds include:

- Convention center capital projects
- District energy system service projects
- ADA improvements to Metro facilities
- Infrastructure improvements at the Fulton complex
- Renovations to the temporary city hall building for future use by Metro departments
- E-budget system enhancements
- Roof replacements and repair at various Metro buildings
- Renovation to the Knowles Home and Bordeaux long-term care facilities
- Restoration of the Nashville City Cemetery
- Land acquisition for the Bellevue and Goodlettsville branch libraries
- Funding for a new downtown transit center for MTA
- Construction of the new Cane Ridge high school in the Antioch area
- A new scoreboard and control room at the Gaylord Entertainment Center

A detailed list of all capital projects to be funded by this bond issue, including the estimated cost for each project, is attached to this analysis. Over the past several years, the council has chosen to defer the legislation associated with the mayor's capital spending plan until after the adoption of the operating budget.

RESOLUTION NO. RS2006-1330 (MCCLENDON) – This resolution supplements and amends Resolution No. RS2006-1305 and awards the sale of general obligation bonds in an amount not to exceed \$203,780,000 to retire outstanding commercial paper issued by the Metropolitan Government for various capital projects. On May 16, 2006, the council approved Resolution No. RS2006-1305, which authorized the issuance of these bonds. Invitations to bid on the sale of the bonds have been sent and the Metropolitan Government is ready to award the sale. All of the projects to be funded by these bonds have already been approved by the council as part of the mayor's previous capital spending plans. Some of the projects that were temporarily funded with commercial paper include sidewalks, the new courthouse parking garage, renovation of the existing courthouse, construction of the A.A. Birch criminal court building, implementation of the schools and parks master plans, new construction and upgrades to the Fulton complex (formerly the Howard Office complex), and bridge and roadway maintenance projects. This resolution also approves the preparation and distribution of a preliminary official statement in connection with the bonds.

In addition to retiring approximately \$140 million in commercial paper, the bond resolution awards the sale of \$60 million in new debt to fund projects approved by the council as part of previous capital spending plans submitted by the mayor. This \$60 million is being sent directly to the bond market rather than taking out commercial paper prior to the issuance of the bonds. Although this is considered "new money" in the bond resolution, it is important to note that this is to finance capital projects, such as the courthouse renovation and various schools projects, already approved by the council in previous initial bond resolutions.

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RESOLUTION NO. RS2006-1330 (continued)

These bonds are supported by the full faith and credit of the Metropolitan Government, and the debt will be paid from the USD and GSD debt service funds. There will be a substitute resolution that awards the bonds to the bidder with the lowest true interest cost to the Metropolitan Government.

RESOLUTION NO. RS2006-1331 (MCCLENDON) – This resolution provides that the Metropolitan Government will sell its tax receivables to public or private parties. The state senate and house passed legislation on May 23rd and 25th, respectively, that allows Davidson County and Knox County to elect to sell their tax receivables to public or private parties. Tax receivables are defined under the new state law as the right to receive revenue from a tax secured by a lien on real property that remains unpaid after its due date (delinquent tax bills). The sale of a tax receivable is essentially the sale of the right to the cash flow at a later date. The sale of tax receivables has become very popular with municipalities, especially those in urban areas, since local governments are often very limited in their ability to generate additional revenue. This practice allows municipalities to receive cash upfront for what has been a nonperforming asset.

Pursuant to the new state law, the purchasers of the tax receivables would be entitled to payment once the taxes are collected. However, unlike many other tax receivable sale programs, Metro will still collect the taxes rather than transferring the responsibility for collecting the taxes to the buyer of the receivables. Interest and penalties would continue to accrue on the unpaid taxes after the receivables are sold. Metro currently collects approximately 94-95% of property taxes each year, leaving 5-6% in uncollected taxes that would be sold.

Although this practice provides an influx of cash into the operating budget, there are some potential downsides. If these receivables are sold at a discount, which presumably they will be, Metro would get the benefit of having the money now, but would ultimately not realize the full benefit of the collection on the receivables at a later date. Thus, once this practice is started, it must be continued in future fiscal years to avoid having a substantial hole in the budget. Further, there is some concern regarding the reliance upon the proceeds from the sale of tax receivables in funding recurring budget items, as opposed to using the proceeds solely for capital projects. Finally, there have been some questions among government accounting professionals as to whether the sale of tax receivables should be defined as a sale, which is reported as revenue, or as collateral against the repayment of funds borrowed by the government, which would be reported as a liability. The Governmental Accounting Standards Board (GASB) is in the process of promulgating criteria for determining whether an actual sale has occurred.

According to the mayor's proposed budget, Metro is expected to realize approximately \$18.4 million in revenue from the delinquent property taxes sold during the next fiscal year. This \$18.4 million is realized as revenue to balance the mayor's proposed budget. If this revenue is not included in the budget, the council would have to either cut \$18.4 million from the operating budget or increase the tax levy by approximately 13 cents.

As of June 1, 2006, the Tennessee general assembly website is not showing that this new state law has a public chapter number, which means that it likely has not been signed by the governor. This resolution should be deferred to track with the adoption of the operating budget.

RESOLUTION NO. RS2006-1332 (MCCLENDON) – This resolution approves a new fee schedule associated with the review and processing of certain zoning applications by the planning department. The Metropolitan zoning code provides that standardized fee schedules may be established to partially defray the processing and administration costs for zoning applications. Such a fee schedule must be approved by resolution of the council in order to be effective. An independent consultant hired by Metro has previously recommended fee increases for various Metro departments to help defray the full cost of services provided. The new fee schedules proposed by the planning department are based upon the full cost fee recommendation. Some of the notable fee increases are as follows:

1. Base zone change Increase from \$800 to \$1,200
2. Specific Plan zone change Increase from \$800 to \$1,600 for up to 5 acres
5-100 acres: Increase from \$10 to \$100 per acre
100+ acres: Increase from \$5 to \$45 per acre
3. Overlay preliminary revisions Increase from \$600 to \$1,600 for up to 5 acres
(includes PUDs and historic overlays) 5-100 acres: Increase from \$30 to \$100 per acre
100-500 acres: Increase from \$15 to \$45 an acre
500+ acres: Increase from \$7.50 to \$25 per acre

The council office recommends that this resolution be deferred to track with the operating budget.

The council office would also point out that the wrong fee schedule is attached to the resolution. There is an amendment to substitute the correct schedule. Since this fee increase is necessary to balance the mayor's proposed budget, failure to approve the fee increase, as amended, will necessitate a reduction in the planning department's operating budget (or some other general fund department's budget), or an increase in the tax levy, to offset the lower revenues.

RESOLUTION NO. RS2006-1333 (MCCLENDON) – This resolution provides additional compensation to the Davidson county circuit court clerk and criminal court clerk in an amount equal to ten percent of their base salary. State law sets the minimum salaries for county officials based upon the population of the county and a complicated escalator formula tied to the general increases in state employees' compensation. The county officials include the sheriff, the property assessor, the county clerk, the court clerks, the trustee and the register of deeds. State law provides that county officials must all receive the same salary, with two important exceptions for the sheriff and certain court clerks.

One of these exceptions is for court clerks that serve more than one court. Such court clerks may receive additional compensation in the amount of ten percent of their base salary to compensate them for "the additional duties and time required to serve multiple courts." The Davidson County circuit court clerk serves the eight circuit courts, the civil division of the general sessions court, and the traffic court. The criminal court clerk serves the criminal division of both the general sessions court and the state trial court. This resolution increases the salaries for these two positions by ten percent, as allowed by state law.

The council office is of the opinion that adoption of this resolution will automatically result in a salary increase for the sheriff, since state law provides that the salary for the sheriff must be at least ten percent higher than the other general officers of the county. In fact, this law was just amended effective May 4, 2006 to clarify that any additional compensation provided to the court clerks is used in calculating the sheriff's salary.

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RESOLUTION NO. RS2006-1333 (continued)

The council office recommends that this resolution be deferred to track with the operating budget to ensure funds are available in the operating budget to pay for these raises.

RESOLUTION NO. RS2006-1334 (CRADDOCK) – This resolution provides a proposed amendment to the Metropolitan Charter regarding the establishment of an independent audit department for the Metropolitan Government. This amendment is very similar to the Charter amendment proposed by the mayor, which is the subject matter of Resolution No. RS2006-1303 that was deferred indefinitely at the last council meeting. The mayor's proposed amendment provides that the metropolitan auditor would be selected from a list of three persons recommended by the audit committee, and would be subject to confirmation of the council. The metropolitan auditor would serve a term of eight years and could be removed for cause by the audit committee.

This proposed amendment differs from the mayor's proposed version in that the auditor would be appointed by a majority vote of the council from a list of three persons recommended to the council by the audit committee. If the council deemed that the persons recommended by the committee were not suitable, the council could reject the names and the committee would have to submit three additional names. This Charter amendment also differs from the mayor's version as it pertains to the membership of the audit committee. The mayor has proposed adding two additional positions to the committee, which would be appointed by the mayor. These two positions would be in addition to the vice mayor, the director of finance, two members of council, one member selected by the Nashville Area Chamber of Commerce, and one member selected by the Nashville Chapter of the Tennessee Society of Certified Public Accountants. This Charter amendment does not include the two additional members to be appointed by the mayor.

The council, pursuant to the Charter, may only adopt two resolutions during the term of the council that submit amendments to the voters for ratification. Each proposed amendment to the Charter must be adopted by 27 affirmative votes of the council, and the resolution itself submitting the amendment must be adopted by 27 affirmative votes in order to become effective. These resolutions provide that the date for holding the referendum election on the Charter amendments is to be the November 7, 2006 election. The Charter provides that resolutions proposing amendments to the Charter must be filed at least 80 days prior to the election. State election law provides that resolutions requiring the holding of elections on questions submitted to the people must be which are to be held at the regular election must be filed with the election commission not less than 60 days prior to the November election. State law further provides that the resolution must be adopted between 45 and 60 days prior to the election. Thus, this resolution should be deferred indefinitely and brought back as part of the larger Charter amendment package.

This proposed charter amendment has been referred to the charter revision commission. The commission unanimously recommended the mayor's version of the amendment creating the department of audit.

RESOLUTION NO. RS2006-1335 (MCCLENDON) – This resolution approves a contract between the Metropolitan board of health and the Campus for Human Development for the operation of an

educational day center and housing for substance abuse treatment participants. Pursuant to this contract, the Campus for Human Development will be paid \$180,000 to provide these services. The term of this contract is through June 30, 2006, with a possible extension of four additional one-year terms. According to the sole source contract justification form, the Campus for Human Development is the only agency within close proximity to the downtown clinic that is capable of providing the education services and shelter for the homeless clients in the area.

RESOLUTION NO. RS2006-1336 (MCCLENDON) – This resolution approves a grant agreement in the amount of \$80,000 between Centerstone Community Mental Health Centers, Inc., and the Metropolitan board of health for the "Project STAR" program. This program provides prevention services to students between the ages of 8 and 16 to address maternal and infant health, substance abuse, community health, and tobacco use. The program focuses on helping youth and their families apply skills in order to maintain a healthy lifestyle. The term of the grant is from July 1, 2006, through June 30, 2007.

RESOLUTION NO. RS2006-1337 (DOZIER & MCCLENDON) – This resolution approves an application for a Highway Safety Grant from the state department of transportation for the sheriff's Alcohol Awareness for Everyone program. The sheriff's office is seeking \$204,500.16 in federal pass-through funds for this program. These funds will be used to help reduce drunk driving among young people through the following measures:

1. Tours of the correctional facility and discussion with DUI offenders between the ages of 18 and 25.
2. The establishment of an extended Sober Ride program that will provide information as to the effects of alcohol abuse and agencies that can help treat alcohol abuse problems.
3. An educational curriculum for use in Metro public schools that are considered high risk for alcohol abuse.

RESOLUTION NO. RS2006-1338 (TOLER & MCCLENDON) – This resolution accepts a grant in the amount of \$340,125 from the state department of transportation for the resurfacing of Burkitt Road. This is a typical state aid contract whereby the state of Tennessee contributes seventy-five percent of the costs to resurface roadways in Davidson County. This 4.73-mile section of roadway is located between Nolensville Road and I-24. There is a required local match in the amount of \$74,997.20.

RESOLUTION NO. RS2006-1339 (TOLER) – This resolution authorizes the director of public property administration to exercise an option to purchase the home located at 641 Brook Drive as part of a flood-prone home buyout program. The Metropolitan Government has received over \$1.7 million in federal funds to pay for a substantial part of this home buyout program. Only properties that are in danger of repeated flooding and that are unable to obtain federal flood insurance can qualify for the home buyout program. This parcel is to be acquired at a cost of \$128,000.

RESOLUTION NO. RS2006-1340 (DOZIER & MCCLENDON) – This resolution authorizes the department of law to pay \$250,000 into the court to release the Metropolitan Government from a lawsuit brought by Terrie H. Fish. On August 8, 2005, a Metro police officer was traveling west on

Charlotte Pike when he looked away from the road, crossed the centerline into the eastbound lane of traffic, and collided head-on with a vehicle driven by Ms. Fish. The police officer was looking down at his police radio to adjust the volume when he crossed into the oncoming lane of traffic. The officer was driving 61 miles per hour in a 45 miles per hour zone. Ms. Fish was seriously injured in this accident, suffering a crushed right leg and knee, a left femur fracture, left elbow fracture, neck strain and trauma to her entire body. Her medical expenses totaled more than \$392,000. Ms. Fish filed suit against Metro and the officer seeking past and future medical expenses, pain and suffering, loss of enjoyment of life, and loss of earning capacity. The officer was dismissed from the suit pursuant to state law which prevents claims against an employee of governments covered under the governmental tort liability act (GTLA).

The Metro police officer was clearly at fault in this accident, and therefore the Metropolitan Government is liable for the injuries to the extent allowed by the GTLA. The department of law recommends paying \$250,000 into the court, which is the full amount allowed under the GTLA, to have the lawsuit dismissed against the Metropolitan Government. The police officer involved in this accident received disciplinary action consisting of the loss of five vacation days.

p:RESOLUTIONS

- BILLS ON SECOND READING -

ORDINANCE NO. BL2006-1013 (TYGARD, CRADDOCK & GOTTO) – This ordinance, as amended, would require that all procurement contracts for goods or services with an annual payment of more than \$500,000, or an aggregate total payment of more than \$3 million over the life of the contract, and which are awarded to a contractor other than the lowest bidder, be approved by resolution of the council. Contracts for professional or consulting services would be exempt from this ordinance. The Code provides that professional services contracts, which include legal services, medical services, accounting services, fiscal agents, financial advisors, architects, and engineers, be awarded on the basis of “recognized competence and integrity”, not based on the lowest cost to Metro. This ordinance also would exempt contracts awarded to minority or disadvantaged businesses, or to other businesses whose proposal was higher due to their use of minority subcontractors.

As provided in Chapter 4.12 of the Metropolitan Code of Laws, the Metropolitan Government procurement system is based upon competitive sealed bidding and competitive sealed proposals. Competitive bidding is used for the procurement of most tangible goods, where an apples-to-apples comparison can be made between vendors selling an identical product. Under the competitive bid system, the contract is awarded to the bidder that can supply the goods at the lowest cost to Metro. On the other hand, when the purchasing agent determines that the use of competitive bidding is either not practicable or advantageous to the Metropolitan Government, a contract may be entered proposals where factors in addition to price are considered. While the awarding of most contracts is at the discretion of the purchasing agent, the Code currently requires that contracts for the collection and disposal of solid waste with a contract amount in excess of \$500,000 and contracts for the privatization of government services be approved by resolution of the council.

This ordinance was filed in response to press reports about the intent to award a contract for security services at Metro facilities to Wackenhut Corp., whose bid was approximately \$900,000 more per year than the other qualified bidders. The entire RFP has subsequently been rescinded by the purchasing agent and a new RFP process will be initiated.

The council office would point out that the adoption of this ordinance could have serious implications on the Metropolitan Government. This ordinance could result in work stoppages on construction projects where change orders increase the contract amount above the \$3 million threshold. Such delays would likely inconvenience the public and may compromise public safety.

The council office would also remind members of council that the Charter grants the responsibility for the procurement of government goods and services to the purchasing agent. Adoption of this ordinance could be deemed to be an unlawful attempt by the council to remove authority given to the purchasing agent by the Charter. While the Code does require that privatization and solid waste contracts be approved by the council, these are related to policy issues that directly impact employees and services provided by the Metropolitan Government.

The department of law has opined that the amendment excluding contracts awarded to disadvantaged businesses from this ordinance is unconstitutional because it affords preferential treatment to minorities and women-owned businesses. Therefore, if the council enacted this ordinance with the amendment, it would not be enforced by the purchasing agent since he cannot act in a manner contrary to the advice of the director of law.

ORDINANCE NO. BL2006-1050 (FOSTER) – This ordinance amends the Metropolitan Code of Laws to require Metropolitan Government boards and commissions to publicly announce at each meeting the timeframe for appealing a decision of the board or commission. Each board and commission would be required to make a standard announcement approved by the department of law that informs the public as to the process and timeframe for appealing a decision. The announcement is to advise persons interested in appealing a decision to seek the advice of independent counsel to ensure that the appeal is filed in a timely manner and that all procedural requirements have been satisfied.

ORDINANCE NOS. BL2006-1062 & BL2006-1063 (DOZIER) – These two ordinances amend the taxicab provisions of the Metropolitan Code of Laws at the request of the transportation licensing commission.

Ordinance No. BL2006-1062 amends the Metro Code to allow taxicab drivers to discharge vehicles away from the curb whenever access to curb space is blocked by parked vehicles. The Code currently requires taxicab drivers to discharge passengers only when they are able to pull up next to a curb. Since many vehicles park on the street in the downtown area, it is often difficult for taxicab drivers to find open curb space to discharge passengers. This ordinance would allow drivers in such a case to pull to the far right hand lane and discharge passengers from the right side of the vehicle.

Ordinance No. BL2006-1063 amends the Metro Code to allow the transportation licensing commission to set temporary fuel surcharges. The Metro Code sets the maximum fares that taxicabs can charge passengers, but does not include any provisions enabling the commission to set additional fees. Due to the high cost of gasoline, the transportation licensing commission desires the authority to authorize a temporary fuel charge in accordance with rules established by the commission.

The council office recommends that this ordinance be amended to either place a maximum percentage increase or require approval of the amount of the surcharge by resolution.

ORDINANCE NO. BL2006-1064 (ISABEL, WILHOITE & OTHERS) – This ordinance amends the Metropolitan Code of Laws to prohibit the use of hand-held mobile telephones while operating a motor vehicle. In April of 2004, the Council enacted Ordinance No. BL2004-177 to prohibit drivers of busses or vans transporting children from using mobile phones, except in the case of an emergency. This ordinance would substitute this provision for a blanket ban on the use of mobile phones while driving, unless a “hands free” device is used.

Various cities and states have enacted similar bans on the use of mobile phones while driving, including Chicago, New York, Washington, DC, the State of Connecticut, and the State of New Jersey. In addition, four states — Colorado, Delaware, Maryland and Tennessee – banned cell phone use by minor drivers in 2005. Violators of this ordinance would be subject to a fifty dollar fine.

ORDINANCE NO. BL2006-1065 (WALLACE) – This ordinance amends the Metropolitan Code of Laws to prohibit chain link fences along arterial and collector streets. The Code currently prohibits the use of barbed or razor wire on fences along sidewalks within the urban services district. This ordinance would essentially prohibit any chain link fence along the right-of-way of a collector or arterial street, which are the classifications used for the major streets and roads in Davidson County. (continued on next page)

ORDINANCE NO. BL2006-1065 (continued)

This ordinance would apply to both the urban services district and the general services district, and would prohibit chain link fences in both commercial and residential areas.

The council office would point out that this ordinance could result in a substantial cost to the Metropolitan Government, especially schools, if Metro facilities were required to have stone, brick or wood fences.

ORDINANCE NO. BL2006-1066 (MCCLENDON) – This ordinance amends the Metropolitan Code of Laws to require property owners to obtain a permit bond for certain residential construction and repairs. The building code currently only requires contractors to post a permit bond for construction, demolition, and repair work. Although individual property owners performing the work themselves must obtain a building permit, they are not required to post a permit bond.

This ordinance would require residential property owners that have been granted more than two extensions for a permit to construct, erect, alter or repair his/her residential building or structure to post a bond to ensure that the work is completed in an adequate and timely manner.

ORDINANCE NO. BL2006-1067 (MCCLENDON) – This ordinance amends the Metropolitan Code of Laws to require the director of the department of codes administration to forego issuing a notice of violation for repeat offenders and immediately initiate the appropriate court action against the violator. The code currently provides that the codes director has the discretion to forego the issuance of a notice of violation to a repeat offender.

According to the codes director, this ordinance will have little effect since the codes department already has a policy for not sending a notice of violation to repeat offenders.

ORDINANCE NO. BL2006-1068 (ISABEL) – This ordinance amends the Metropolitan Code of Laws to limit the duration portable storage units may remain on residential property. This ordinance applies to portable on demand storage units, also known as "PODs", that have become a popular tool in recent years to assist persons in moving from one residence to another. This ordinance would limit the duration PODs can be located on residential property to thirty days.

ORDINANCE NO. BL2006-1069 (CRAFTON) – This ordinance amends the building code provisions of the Metro Code of Laws to prohibit the issuance of a building permit if the applicant or property owner has violated a stop work order within the past year for the property for which the permit is sought, or has violated T.C.A. § 7-51-1201 pertaining to the demolition of historic buildings. The building code provides that the director of codes administration may issue a stop work order in writing if work on any building or structure is being done contrary to the building code or in a dangerous or unsafe manner. When an emergency exists, the director is not required to give written notice of the stop work order. Further, state law provides that no residential structure may be demolished without approval by the local legislative body if the structure was (1) constructed before 1865; (2) is repairable at a reasonable cost; and (3) the structure has a historical significance besides age itself.

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ORDINANCE NO. BL2006-1069 (continued)

This ordinance would prohibit any applicant from obtaining a building permit if they have been found by a court to have violated a stop work order within the past twelve months for the property for which the permit is sought, or if they have violated state law by demolishing a historic residential structure on the property for which the permit is sought within the past year.

ORDINANCE NOS. BL2006-1070 & BL2006-1071 (TOLER & MCCLENDON) – These two ordinances authorize the Metropolitan Government to enter into participation agreements with private developers to provide public sewer service to new subdivisions in Davidson and Williamson Counties. The developers will be required to contribute \$2,000 per single-family home connection toward the projects in aid of construction. These funds are to be deposited into the water and sewer extension and replacement fund. These are typical participation agreements entered into by the Metropolitan Government, acting through the department of water and sewerage services, whereby private property owners and/or developers contribute a portion of the cost to extend or upgrade public water and sewer service.

Ordinance No. BL2006-1070 approves a participation agreement with Burkitt Place Development, LLC to provide public sewer service to the Burkitt Place subdivision in Davidson and Williamson Counties. Burkitt Place Development, LLC has agreed to contribute \$92,000 toward the cost of the project in aid of construction for a total of 46 single-family home connections.

Ordinance No. BL2006-1071 approves a participation agreement with Pulte Homes, Tennessee LP to provide public sewer service to the Winterset Woods subdivision in Williamson County. The developer has agreed to contribute \$38,000 toward the cost of the project in aid of construction for a total of 19 single-family home connections.

ORDINANCE NOS. BL2006-1072, BL2006-1073 & BL2006-1074 – These three ordinances abandon sanitary sewer lines and accompanying easements that will be replaced by new sewer lines and easements. The existing lines to be abandoned are no longer needed by the Metropolitan Government. These three ordinances have been approved by the planning commission.

Ordinance No. BL2006-1072 (Toler) abandons a 15", 12" and 8" sanitary sewer line and easement for the Nolensville Road Wal-Mart project.

Ordinance No. BL2006-1073 (Summers & Toler) abandons an 8" sanitary sewer line and easement for the Southgate Condominiums project.

Ordinance No. BL2006-1074 (Walls & Toler) abandons an 18" sanitary sewer line and easement for the Costco at the Hillwood Plaza shopping center.

ORDINANCE NOS. BL2006-1075 & BL2006-1076 – These two ordinances accept easements to allow for the completion of multiple stormwater projects. These easements are being donated by the property owners at no cost to the Metropolitan Government. These ordinances have been approved by the planning commission.

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ORDINANCE NOS. BL2006-1075 & BL2006-1076 (continued)

Ordinance No. BL2006-1075 (Walls & Toler) authorizes the acceptance of easements for the following properties:

- 557 Castlegate Drive
- 561 Castlegate Drive
- 564 Castlegate Drive
- 568 Castlegate Drive
- 710 Holder Drive
- 712 Holder Drive
- Centennial Drive, unnumbered

Ordinance No. BL2006-1076 (Walls, Summers & Others) authorizes the acceptance of easements for the following properties:

- 2244 Hobson Pike
- 1010 16th Avenue South
- 401 McIver Street
- 3101 Nolensville Pike
- 3105 Nolensville Pike
- 2323 Springdale Drive
- 1101 18th Avenue South
- 1103 18th Avenue South
- 218 Crestview Drive
- 3821 West End Avenue

ORDINANCE NOS. BL2006-1077 & BL2006-1078 – These two ordinances authorize the director of public property to acquire easements by negotiation or condemnation in conjunction with two water/sewer department projects. These two ordinances have been approved by the planning commission.

Ordinance No. BL2006-1077 (Shulman, Toler & McClendon) approves the acquisition of drainage easements for the following properties at an estimated cost of \$1,500:

- 3445 Hampton Avenue
- 3435 Woodmont Boulevard

Ordinance No. BL2006-1078 (Summers & Toler) approves the acquisition of 26 easements at an estimated cost of \$39,000 in connection with the Richland Creek/Charlotte Pike sewer system rehabilitation project. Easements are to be acquired for the following properties:

- 4601 Murphy Road
- 5401 Knob Road
- Knob Road, unnumbered
- 100 White Bridge Pike
- 4601 Murphy Road
- 5628 Meadowcrest Lane
- 5626 Meadowcrest Lane
- 5624 Meadowcrest Lane
- 5622 Meadowcrest Lane

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Ordinance No. BL2006-1078 (continued)

- 5620 Meadowcrest Lane

- 5618 Meadowcrest Lane
- 5616 Meadowcrest Lane
- 5614 Meadowcrest Lane
- 5516 Bon Air Circle
- 325 A 54th Avenue North
- Charlotte Pike, unnumbered
- 5511 Charlotte Pike
- 5509 Charlotte Pike
- Orlando Avenue, unnumbered
- 302 Orlando Avenue
- 300 Orlando Avenue
- 242 Orlando Avenue
- 240 Orlando Avenue
- 238 Orlando Avenue
- 236 Orlando Avenue
- 234 Orlando Avenue

ORDINANCE NO. BL2006-1079 (WALLACE) – This ordinance declares the Municipal Garage located at 413 Fifth Avenue North to be surplus and authorizes the director of public property administration to sell the property in accordance with the standard procedures for the disposition of surplus property. This property will be deeded over to the Metropolitan transit authority for construction of the new central bus terminal. According to Metro real property services, additional property will need to be acquired for this project at a later date.

ORDINANCE NO. BL2006-1080 (HAUSSER) – This ordinance abandons the right-of-way and easement for Alley #439 from Compton Avenue to alley #952, and abandons a 250-foot portion of the right-of-way for Alley #952. This closure has been requested by Weatherford and Associates on behalf of Belmont University, the owners of all the affected properties. A new alley is to be dedicated by plat. This ordinance has been approved by the planning commission.

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- BILLS ON THIRD READING -

ORDINANCE NO. BL2005-922 (DOZIER) – This ordinance amends the Metropolitan Code of Laws to provide for reimbursement of customer overpayments for water and sewer services. The Metro Code sections regarding water rates and charges provide for the classification of customers into four classes for the purpose of billing. These four classes are described as follows:

1. Residential – Up to 2 housing units on a common meter
2. Small commercial – Up to 1,600 cubic feet per month
3. Intermediate commercial and industrial – 1,600 to 200,000 cubic feet per month
4. Large commercial and industrial – Over 200,000 cubic feet per month.

Pursuant to this ordinance, if the director of water and sewerage services determines that a customer has been overcharged because of an inaccurate classification, based upon the previous 12-month water usage period, then the customer shall be reimbursed for the overpayment. The reimbursement would be for a period of 36 months prior to the date the error was discovered, unless a certain date for the error can be established that is less than 36 months prior to the discovery date. A similar ordinance was withdrawn by the council in 2003.

The council office would point out that this ordinance would apply retroactively, meaning that reimbursements would have to be made for any overcharge that occurred prior to the effective date of this ordinance. The council office and the department of law have raised concerns regarding whether such a retroactive provision is authorized under Tennessee law. As a result of the retroactive application of this ordinance, the director of finance has refused to certify the availability of funds. A copy of the finance director's letter is attached to this analysis.

Pursuant to Rule 22 of the Council Rules of Procedure, if this ordinance is deferred again it is deemed withdrawn and is to be permanently removed from the agenda.

ORDINANCE NO. BL2006-1015 (MCCLENDON) – This ordinance, as amended, would allow the Metropolitan Government to accept donations valued at less than \$5,000 by resolution. Metro departments and boards, such as the health department, the board of parks and recreation, and the library, have the authority to accept donations without council approval. However, donations to all other departments, such as police and fire, must be approved by ordinance.

Ordinance No. BL2002-1186 was enacted by the council several years ago to allow grants to be approved by resolution. This ordinance essentially expands this ability to include donations under \$5,000. Donations over \$5,000 would still have to be approved by ordinance. From time to time, donations of a nominal value are made to various Metro departments. In most cases, the value of the employee time in preparing and filing the legislation exceeds the value of the donation. This ordinance would allow for the expedited acceptance and use of the donations.

ORDINANCE NO. BL2006-1046 (BRILEY & GILMORE) – This zoning text change would allow for reductions in minimum lot sizes for conservation subdivisions. The purpose of this ordinance is to provide developers with an incentive for conserving natural space. The zoning code currently allows for reductions in lot sizes equivalent to two smaller base zoning districts through the cluster lot option when at least fifteen percent of the land area is conserved. For example, a developer of RS15 property has the option of leaving open space and "clustering" the subdivided lots with a lot equivalent to the RS7.5 district. However, the cluster lot option is only available for the R and RS zoning districts, not the AG and AR2a districts.

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ORDINANCE NO. BL2006-1046 (continued)

This ordinance would allow developers to achieve a reduction in lot size in areas worthy of conservation when at least fifty percent of the land is designated as permanent open space or farmland. This ordinance does not modify the cluster lot option provisions in the zoning code. This ordinance differs from the cluster lot option in that fifty percent of the land would have to be left undeveloped, as opposed to the fifteen percent requirement for cluster lot subdivisions. In addition, the cluster lot option allows developers to set aside land that is not able to be developed because it is in the floodplain or because of steep topography. This ordinance requires that the most worthy areas be conserved, not just the leftover property frequently used in cluster lot subdivisions.

By taking advantage of this conservation subdivision provision and setting aside fifty percent of the total land area as open space, developers will be able to substantially reduce the minimum lot sizes and thus lower their costs. The land area must be held in a conservation easement to ensure that it will never be developed. The ordinance would require that the lots closest to neighboring developments be the largest. The further away a lot is from a neighboring property outside the conservation subdivision, the smaller the lot could be. For example, the RS80 base zoning district requires a minimum lot size of 80,000 square feet. Under this ordinance, if the lot was 150-200 feet from a neighboring property, then the minimum lot size would be 20,000 square feet. The minimum lot sizes would increase the closer the property is to a neighboring property. Lots 50 feet or less from a neighboring property would not qualify for a reduction in the minimum lot size. It is important to note that this ordinance would not result in a density bonus. It would only allow for a reduction in minimum lot size.

This ordinance would also do away with the landscape buffer requirement along scenic arterials where a conservation subdivision provides a scenic easement of 50 feet or more. Otherwise, an artificial landscape buffer would have to be planted in an already natural area. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2006-1052 (MCCLENDON & TOLER) – This ordinance approves a licensing agreement with the Nashville and Eastern Railroad Corporation for the purpose of installing fiber optic cable and PVC pipe in the railroad right-of-way at mile marker 3.11 and 3.24 for the benefit of the department of water and sewerage services. The license would be in perpetuity, provided however, that the agreement may be terminated by either party upon 90 days written notice, and Metro would be required to remove the cable and pipe from the railroad right-of-way. Metro is required to pay a one-time fee of \$270.00 to cover the railroad's costs in preparing the agreement.

Metro agrees to indemnify the railroad, to the extent it legally may, for claims or injuries arising from the installation and maintenance of the water main. Metro, or its contractor, will also be required to maintain a \$2,000,000 certificate of public liability insurance. License agreements with railroads are typically the only contracts in which Metro agrees to provide a certificate of liability insurance, especially since Metro can require the contractor actually performing the installation work to maintain the insurance. Metro has several similar licensing agreements with Nashville and Eastern Railroad.

ORDINANCE NO. BL2006-1053 (RYMAN & DOZIER) – This ordinance names fire station No. 39 located at 1247 South Dickerson Road the "B.R. Hall, Sr. Station". The Metro Code of Laws provides that no building of the Metropolitan Government may be named except pursuant to an ordinance enacted by the council. B.R. Hall, Sr. recently retired from the Nashville fire department after almost (continued on next page)

ORDINANCE NO. BL2006-1053 (continued)

33 years of service. Mr. Hall was hired in 1973 and was promoted to captain in 1988. During his years with the fire department, Mr. Hall served the I.A.F.F. Local 140 Union as the secretary/treasurer, second vice president, and ultimately president from 1983 to 1992 and from 1994 to 2006. In addition, Mr. Hall served as the fire department's representative on the benefit board from 1985 to 2006. A biographical sketch of Mr. Hall is attached to the legislation, as required by the Metropolitan Code of Laws.

ORDINANCE NO. BL2006-1054 (JAMESON & RYMAN) – This ordinance amends the Metropolitan Code of Laws to change the definition of "disability" as it relates to disability pensions for Metro employees. Under the current code, if an employee's termination occurs because of a permanent disability while he is a fireman or policeman, or while in the line of duty (for all other Metro employees), the employee is deemed to be "disabled" if he/she is unable during a two year period following the disability to perform the duties of any occupation in the Metropolitan Government which is offered at a salary that is equal to or higher than he/she was receiving at the time of the disability. After the two year period, the person is deemed to be disabled if he/she is unable to perform any job, whether with the Metropolitan Government or not, at a salary that, when added to the disability payments, would result in total income that is greater than his/her frozen earnings at the time of disability. Police officers and firefighters are considered disabled if they can no longer perform the duties of a police officer or firefighter. Any employee whose termination occurs because of a disability that is not related to an in-line-of-duty injury, and who is not a policeman or fireman, is deemed disabled if he/she becomes permanently disabled as a result of an injury, disease, or mental disorder so that he/she is unable during the continuation of the disability to perform any job, whether with the Metropolitan Government or not, at a salary that, when added to the disability payments, would result in total income that is greater than his/her frozen earnings at the time of disability.

The primary purpose of this ordinance is to clarify that employees are disabled if they are unable to work at a Metro job at the same or greater salary than at the time they became disabled. Disability pensioners would no longer be required to show that they could not work anywhere. To accomplish this, the ordinance makes the following changes to the definition of "disability":

1. The words "permanently disabled" are removed.
2. The two year time period distinction is removed from the definition of "disability", to conform to the prior interpretation given by the employee benefit board. Thus, a policeman or fireman, or another Metro employee injured in the line of duty, would be deemed disabled if during the continuation of the disability he/she was unable to perform the duties of any job within the Metropolitan Government at a rate of pay equal to or higher than he/she was making at the time of the disability. After reviewing the continuing disability, such person would be deemed disabled if it is determined that they are unable to engage in any occupation within the Metropolitan Government at a salary that, when added to the disability payments, would result in total income that is greater than his/her frozen earnings at the time of disability.
3. For Metro employees, other than police officers or fire fighters, that suffer a disability as a result of a disease or injury not occurring in the line of duty, such employees will be deemed disabled if they are incapable of engaging in any occupation in the Metropolitan Government which is offered at a rate of earnings that, when added to the disability payments, would result in total income that is greater than their frozen earnings at the time of disability.

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ORDINANCE NO. BL2006-1054 (continued)

Pursuant to Rule 36 of the Council Rules of Procedure, any legislation that affects the Metro pension plan must have an actuarial study before the matter can be considered by the council. The study and formulating committee has recommended this change in the definition of disability, and an actuarial study determination of the cost of the changes has been made. The employee benefit board unanimously approved this change in the definition of disability.

ORDINANCE NO. BL2006-1055 (WILHOITE, FORKUM & COLEMAN) – This ordinance accepts a donation of approximately 25 acres of property located at 136 Una Recreational Park Drive for the benefit of the department of parks and recreation. This property is being donated by Una Recreational Center, Inc., at no cost to the Metropolitan Government. The board of parks and recreation has recommended that the Metropolitan Government accept this property.

ORDINANCE NO. BL2006-1056 (TOLER & CRAFTON) – This ordinance authorizes the Metropolitan Government to enter into an agreement with and CSX Transportation, Inc. and Beazer Homes Corporation for the construction and acceptance of a new bridge across the CSX railroad tracks in the Bellevue area. Pursuant to the agreement, Beazer Homes agrees to construct the bridge at its own expense and to reimburse CSX for any costs it incurs as a result of the bridge project, such as equipment, materials, and CSX labor in connection with the supervision of the project. Beazer Homes and its contractor will be required to maintain liability insurance to comply with CSX's and Metro's requirements. Beazer Homes will also be required to provide a performance bond acceptable to CSX and Metro to secure performance of Beazer's obligations under the agreement.

Once the bridge is completed and is deemed to be in compliance with the plans and specifications, the agreement provides that Metro will accept title to the bridge from Beazer Homes and will assume all maintenance obligations for the bridge. Once the bridge is accepted it should be included as part of the street and alley maintenance and acceptance map that is submitted to the council annually for adoption. This ordinance has been approved by the planning commission.

ORDINANCE NOS. BL2006-1057 & BL2006-1058 – These two ordinances abandon portions of Metro Government rights-of-way that are no longer needed for governmental purposes. Metro will retain all easements encumbering these areas. These ordinances have been approved by the planning commission and the traffic and parking commission.

Ordinance No. BL2006-1057 (Gilmore & Ryman) abandons a 790-foot portion of Douglas Road right-of-way. This closure has been requested by Kitty Harvill, the owner of the property at the end of the portion of roadway being abandoned. This section of Douglas Road is only used as a driveway for Ms. Harvill's property, which is the only parcel affected by this closure.

Ordinance No. BL2006-1058 (Dread & Jameson) abandons a portion of unnamed right-of-way between Cargile Road and Haverford Drive. This section of roadway was platted but was never built. This right-of-way abandonment has been requested by James Holt, Jr., of the Holt Southeast Corporation, an adjacent property owner. Consent of the affected property owners is on file with the department of public works.

ORDINANCE NOS. BL2006-1059 (JAMESON) – This ordinance, as amended, renames the portion of Franklin Street between 1st Avenue South and 4th Avenue South as "Gateway Boulevard". This name change was requested by the department of public works now that the extension of Gateway Boulevard has been completed. This ordinance has been approved by the planning commission and the ECD board.

ORDINANCE NOS. BL2006-1060 (GREER) – This ordinance renames P Pool Avenue, between Elm Hill Pike and Transit Avenue, as "Lannie Boswell Avenue". A biography of Lannie Boswell, who lived from 1890 to 1974, is attached to the legislation. This ordinance has been approved by the planning commission and the ECD board.

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